IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4206 of 2007()

CRA.614/2007 of SESSIONS COURT, KOTTAYAM
ST.82/1998 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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REVN. PETITIONER: PETITIONER

MATHEW ALIAS MATHACHAN, S/O JOSEPH,
KOLLAMPARAMBIL VEEDU, THALAYOLAPARAMBU,
VADAYAR VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENT

STATE OF KERALA, REPRESENTED BY
CIRCLE INSPECTOR OF POLICE,
VAIKOM POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P.No. 4206 of 2007

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Dated this the 26th day of November, 2007

ORDER

The revision petitioner is the first accused in ST.No.82/1998 on the file of Judicial First Class Magistrate Court, Vaikom for offences punishable under Sections 7 and 8 of the Kerala Gaming Act. He was acquitted by the trial court on 20.03.03, along with the rest of the other accused. On the very same day the learned Magistrate ordered confiscation of the material objects including the currency notes seized from the room from which the accused were arrested. The revision petitioner challenged the direction regarding the disposal of the material objects issued under Section 452 Cr.P.C by filing an appeal as Crl.A.No.614/2007 with a delay of 1640 days. He filed Crl.M.P.No.2238/2007 to condone the said delay. The learned Sessions Judge as per the impugned order dated 11.10.07 dismissed the application to condone the delay and consequently the appeal was also dismissed as time barred. Hence this revision.

2. The learned counsel appearing for the revision petitioner

submitted that the Magistrate having acquitted the accused ought to have returned the material objects including the currency notes to the revision petitioner instead of ordering confiscation of the same and it was this illegality which was sought to be corrected by the revision petitioner by filing the above appeal, though beyond the period of limitation.

3. I cannot agree with the above submission. Apart from the fact that the revision petitioner had not preferred any claim for interim custody, he filed the appeal against the final direction issued under Section 452 Cr.P.C with a delay of 1640 days. The only reason stated in support of the delay was that the counsel appearing for the revision petitioner in the trial court was entrusted with the file for making a claim, but the counsel after a long period of 1640 days advised him to file an appeal instead of making the claim. Apart from the ipse dixit of the revision petitioner he did not file any affidavit by the counsel to the effect that the counsel had committed a genuine mistake in not advising the client properly.

4. If an affidavit were filed by the counsel, the lower

appellate court would have definitely accepted the petitioner's explanation. In the absence of any affidavit by the counsel, the reason put forward by the revision petitioner in support of the delay was manifestly unsustainable and was rightly rejected by the Court below. I find no reason to allow the prayer of the petitioner. Hence I refuse to interfere with the discretion exercised by the lower Appellate court.

This revision is accordingly dismissed.

V. RAMKUMAR, JUDGE

sj

/True Copy/

P.A To Judge